Unless the writ is a nullity it may be amended. This is so even after judgment, provided the amendment does not alter the judgment. The authority is *Pearlman (Vencers) S.A. (Pty) Ltd.* v. *Bartels.*[4] In that case the plaintiffs sought leave to amend the writ, all subsequent proceedings and judgment by substituting "Josef Bartels trading as Bernhard Bartels" for "Bernhard Bartels." The defendants contended that the court had no jurisdiction to amend a judgment after it had been entered. The judge granted leave to the plaintiffs to amend. On appeal it was held that the court had jurisdiction to amend the title of the action where the substantive judgment was in no way being altered.

It is true that the plaintiff in his affidavit stated that he sued as secretary-general of Sabah Chinese Association. Whether he is the secretary-general of Sabah Chinese Association may be an issue at the trial. If it were accepted that the plaintiff's term as secretary-general expired on a particular date then it must logically follow that the term of other office-bearers appointed at the same time as the plaintiff must also have expired. Although the title contains the words "Secretary-General of Sabah Chinese Association" the indorsement is completely clear of any indication of representative capacity. But the misdescription in the title is never fatal. It does not make the writ a nullity. It can always be cured by amendments as in the case of a misnomer. If an action is brought in a representative capacity when that capacity does not exist then no amendment can cure that.

Generally speaking the court will make such changes in respect of parties as may be necessary to enable an effectual adjudication to be made concerning all matters in dispute. But the court will not however, decide questions of rights which must await the trial when evidence may be adduced.

I am unable to say that the writ is a nullity. It is at most an irregularity. I see no justification whatsoever for taking such drastic step as to set aside the writ. The plaintiff can take steps to amend the writ.

The application also fails for another reason. R.S.C. O. 72 r. 2 provides that no application to set aside any proceeding for irregularity shall be allowed unless made within reasonable time, nor if the party applying has taken any fresh step after knowledge of the irregularity. The summons was clearly made within time. I think there is substance in Mr. Loo's contention that by moving the court to discharge the interim injunction a fresh step has been taken. That the defendants had knowledge of the irregularity was demonstrated by the fact that the points now raised were raised at the hearing to discharge the interim injunction. The letter of the Timbalan Pendaftar Pertubohan is also relevant.

Accordingly, for reasons given I refuse to set aside the writ. I will hear parties as to costs.

Application refused.

Solicitors: *W. K. Loo & Co.; Nicholas Fung & Co.*

GRAHAM STARFORTH HILL v. THE BAR COUNCIL OF MALAYA & ANOR.

[F.C. (Suffian, Gill Ong Hock Sim F.JJ.) February 21, 1972]

[Kuala Lumpur — Federal Court Civil Appeal No. 104 of 1971]

Advocates and Solicitors — Admission — Ad hoc — Conditions to be satisfied — Advocates and Solicitors Ordinance, 1947, s. 8A(2)(a).

This was an appeal from the decision of the High Court ([1971] 2 M.L.J. 269), refusing an application by the appellant to be admitted *ad hoc* as an advocate and solicitor of the High Court in Malaya for the purpose of appearing as leading counsel in an income tax appeal case before the Special Commissioners of Income Tax and in any appeal therefrom.

Held, (dismissing the appeal): while it has been demonstrated that the appellant has generally high qualifications and experience in revenue law, it had not been demonstrated that for the particular case he had special qualifications and experience of a nature not available amongst advocates and solicitors in Malaysia.

Per curiam: An applicant for *ad hoc* admission under section 8A of the Advocates and Solicitors Ordinance has to satisfy four conditions: (a) he is a person who if he was a citizen of Malaysia or a permanent resident in Malaysia would be a qualified person within the meaning of the Ordinance; (b) he has been instructed by an advocate and solicitor in Malaysia; (c) for the purpose of that particular case he has, in the opinion of the court, special qualifications or experience of a nature (d) not available amongst advocates and solicitors in Malaysia.

The following authorities were cited: *Lee Wong Tiang* v. *Public Prosecutor; Re S. K. Lee applicant* [1971] 2 M.L.J. 40; *Re Michael John Mustill* [1971] 1 M.L.J. 175.

FEDERAL COURT.

Ronald T. S. Khoo for the appellant.

Gunn Chit Tuan for the Attorney-General.

K. A. Menon for the Bar Council.

Suffian F.J. (delivering judgment of the court): Until 1st January, 1971, there were many lawyers in Singapore who practised in Malaya also, and one of them was Mr. Graham Starforth Hill, but on that date an amendment by P.U.(A) 123 of 1970 to the Advocates and Solicitors Ordinance, 1947, came into force whereby only persons who are citizens of Malaysia or persons who are permanent residents in Malaysia which Mr. Hill is not, can practise as advocates and solicitors in Malaya.

The amendment, however, provides by a new section 8A the Ordinance for the *ad hoc* admission to the Malayan Bar of lawyers such as Mr. Hill. That section reads —

"(1) Notwithstanding anything contained in this Ordinance the Court may for the purpose of any one case and subject to the following sub-sections admit to practise as an advocate and solicitor any person who if he was a citizen of Malaysia or a permanent resident in Malaysia would be a qualified person within the meaning of this Ordinance.

(2) No person shall be admitted to practise as an advocate and solicitor under sub-section (1) unless —

(a) for the purpose of that particular case he has, in the opinion of the Court, special qualifications or experience of a nature not available amongst advocates and solicitors in Malaysia; and

(b) he has been instructed by an advocate and solicitor in Malaysia.

(3) Any person applying to be admitted under this section shall do so by originating motion verified by an affidavit of the applicant or of the advocate and solicitor instructing him, stating the names of the parties and brief particulars of the case in which the applicant intends to appear; and the originating motion and affidavit or affidavits shall be served on the Attorney-General, the Bar Council and the other party or parties to such case.

(4) Before admitting a person under this section the Court shall have regard to the views of each of the persons served with the application.

(5) The Registrar shall on payment of a fee of one hundred dollars issue to every person admitted under this section a certificate to practise specifying in it the case in which such person is permitted to appear; and any person to whom a certificate to practise has been issued under this sub-section shall for the purpose of his employment in such case be deemed to be a person to whom a certificate to practise has been issued under section 25 of this Ordinance.

(6) The Registrar shall not enter the names of persons admitted under this section upon the Roll but shall keep a separate roll for persons admitted under this section."

By originating motion Mr. Hill applied for *ad hoc* admission under the above provisions for the purpose of appearing as leading counsel for a Kuala Lumpur client who is appealing to the Special Commissioners of Income Tax in *Rubber Trust Ltd.* v. *The Comptroller-General of Inland Revenue* (P.K.R. 129/9) and in any appeal therefrom.

Mohamed Azmi J. refused the application and Mr. Hill appealed to us. We dismissed the application with regret and now give our reasons.

It is to be observed that an application under section 8A must be for the purpose of "any one case" only. To succeed, Mr. Hill has to satisfy four conditions, namely —

(a) he is a person who if he was a citizen of Malaysia or a permanent resident in Malaysia would be a qualified person within the meaning of the Ordinance;

(b) he has been instructed by an advocate and solicitor in Malaysia;

(c) for the purpose of that particular case he has, in the opinion of the court, special qualifications or experience of a nature,

(d) not available amongst advocates and solicitors in Malaysia.

It is not disputed that Mr. Hill satisfies conditions (a) and (b).

Conditions (c) and (d) are, however, disputed by both the Attorney-General and the Bar Council who say that —

(i) it cannot be said that Mr. Hill possesses any special qualifications, knowledge or experience of a nature not available amongst advocates and solicitors in Malaysia; and

(ii) the proceedings before the Special Commissioners of Income Tax for which the applicant is briefed is one which can quite competently be handled by an advocate and solicitor in Malaysia.

The reasons for the application are given in an affidavit sworn by Mr. Ronald Khoo, the instructing solicitor, as follows. In P.K.R. 129/9 before the Special Commissioners of Income Tax the taxpayer company are appealing against the assessment to tax for the years 1966 and 1967 raised by the Comptroller-General of Inland Revenue, which notices of assessment were dated 19th September, 1970. The appeal concerns the application of paragraph 104 of the Income Tax (Transitional Provisions) Order, 1968, under the following circumstances. Under the terms of various agreements executed in 1966 the company sold their estates to a subsidiary, Rubber Trust Plantation Ltd., completion to take place on various different dates, the last of which was 30th September, 1967, on which dates it is not disputed that the company finally ceased business. The company were originally assessed on the basis of the cessation provisions of the Income Tax Ordinance, 1947, of West Malaysia. The Comptroller-General contends that in the circumstances the company's assessments for the relevant years are governed by the provisions of paragraph 104(a) of the transitional and saving provisions embodied in schedule 9 of the Income Tax Act, 1967. The company contend that neither paragraph 104(a) nor paragraph 104(b) has any application. It is further stated that Mr. Hill has at all material times been acting on behalf of the company and the company are of the view that Mr. Hill should personally appear as senior counsel before the Special Commissioners, as very substantial and involved questions of revenue law are contained in that appeal.

The affidavit then proceeds to list Mr. Hill's qualifications and to mention his experience particularly in matters relating to revenue law. There is no need for us to reproduce that part of the affidavit in detail, as Mr. Hill until the amendment was a familiar figure in this court, and we are all aware of his eminence as a lawyer and as an advocate.

Nevertheless with regret we had to dismiss Mr. Hill's appeal because we agreed with the learned judge in the lower court that, while it has been demonstrated that Mr. Hill has generally high qualifications and that he has had experience in revenue law, it has not been demonstrated that for the particular case he has special qualifications and experience of a nature *not available amongst advocates and solicitors in Malaysia.* We agreed with the Attorney-General and the Bar Council that the appeal before the Special Commissioners is one which can quite competently be handled by an advocate and solicitor in Malaysia.

Appeal dismissed.

Solicitors: *Shearn, Delamore & Co.*